

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of Daniel Conn	FINDINGS OF FACT, CONCLUSIONS AND ORDERS
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This matter was heard by telephone conference call before Administrative Law Judge (ALJ) Richard C. Luis on December 5, 2008. The OAH record closed on December 10, 2008.

Krista Guinn Fink, Associate Legal Counsel, Minnesota Department of Corrections, and Community Correction Officer Andrea Stevens appeared on behalf of the Department of Corrections (DOC). Daniel Conn, #123071, 2305 Minnesota Boulevard S.E., St. Cloud, MN 56304, appeared on his own behalf.

STATEMENT OF THE ISSUE

Whether the \$100.00 balance of supervision fees owed to the Department by Daniel Conn may be collected through the Minnesota Revenue Recapture Program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 13, 2008, Daniel Conn was assessed by the Department of Corrections for a supervision fee of \$180.00. He had started on probation in August 2007, and a supervision fee of \$120.00 for the time period between August 2007 to August 2008 was paid to the Department after collection through the Revenue Recapture Program in April 2008.

2. Mr. Conn was placed on probation initially after being sentenced for misdemeanor DUI. In the spring of 2008, Mr. Conn violated probation,¹ and his status was converted to a felony disposition by operation of law because of his prior record.

¹ Test. of Conn.

3. Effective July 1, 2008, the annual supervision fee of \$120.00 owed to the Department by persons on probation was changed, for persons convicted of felonies, to a one-time fee of \$300.00. Mr. Conn had already been credited with payment of \$120.00 of that amount because of the Revenue Recapture payment in April, so his debt for supervision fees became \$180.00 on August 13, 2008, the first “anniversary date” of his being on supervision.

4. Mr. Conn first met with Corrections Agent Andrea Stevens in June 2008, at which time she informed him that the supervision fee would need to be paid on the anniversary of each year of supervision. Mr. Conn explained to Ms. Stevens during the course of that conversation that he was experiencing financial hardship. His claim for social security benefits was still in process, and had already involved a lengthy wait.²

5. On the occasion of his being placed initially on probation for DUI offenses in 2007, Mr. Conn had met with Corrections Agent Julie Grunwald. Ms. Grunwald’s case notes from her meeting with Mr. Conn on August 31, 2007, show “that Dan asked for STS for his fine.”³ STS (Sentencing to Service) is a DOC program that allows probationers to “work off” their supervision fees. Before a decision on assignment to STS could be made in 2007, Mr. Conn was incarcerated for violation of his probation.⁴

6. It is Mr. Conn’s recollection that he came to an oral agreement with Ms. Grunwald in August of 2007, to the effect that she would recommend to “the Court” that Mr. Conn be placed in the STS program, as a way to satisfy his first annual supervisory fee debt of \$120.00. Mr. Conn subsequently violated his probation, and was incarcerated until April, 2008.⁵ During that time, the \$120.00 supervision fee owed by Mr. Conn for the one-year period beginning with the start of his probation was collected by the Department through the Revenue Recapture Program of the Department of Revenue.

7. With respect to the issue of waiver of supervision fees, Mr. Conn and Ms. Stevens have different recollections of their meeting in June of 2008. Ms. Stevens does not remember specifically discussing the subject, but assumes that she brought up the supervision fee obligation to Mr. Conn, because that topic is part of the overall format of the first meeting Ms. Stevens has with any new probationer. Ms. Stevens has no recollection of Mr. Conn’s asking for a waiver application, and believes she would not have raised that particular detail herself because it is DOC protocol not to process a waiver application unless the probationer takes the initiative to ask for one.⁶

8. Mr. Conn recalls that he brought his financial situation to the attention of Ms. Stevens and requested to perform “Sentence to Service” in lieu of the supervision fee, and that Ms. Stevens agreed with him. He recalls that she did not inform him of the need to make a formal, written application for the waiver and did not provide him with

² Test. of Conn.

³ Test. of Stevens.

⁴ Test. of Conn.

⁵ Test. of Conn.

⁶ Test. of Stevens.

the application that would have been reviewed by Ms. Stevens's district supervisor for decision.⁷

9. On October 7, 2008, Mr. Conn was informed in writing that he owed \$180.00 for supervision fees, effective August 13, 2008. The letter also informed him that the \$180.00 balance has been submitted to the State of Minnesota Revenue Recapture Program, and that an additional processing fee will be assessed by the Department of Revenue. The letter informed Mr. Conn that he had a right to contest the recapture proceeding and request a hearing, which Mr. Conn did in a timely manner. This hearing process followed.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The ALJ has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08 and 270A.09.

2. The Notice of Hearing was proper and the DOC has fulfilled all procedural requirements.

3. Daniel Conn became liable for supervision fees of \$180.00 on August 13, 2008, when a one-time felony supervision fee of \$300.00 became effective against him. His \$300.00 debt was set off by \$120.00, which had been paid previously to the DOC through the Revenue Recapture Program.

4. Under Minn. Stat. § 241.272, subd. 4, the Commissioner of Corrections may waive payment of a supervision fee if the Commissioner determines that the offender does not have the ability to pay the fee, the prospects for payment are poor, or there are extenuating circumstances justifying waiver of the fee. In such circumstances, the Commissioner may require the offender to perform community service work as a means of paying the fee.

5. Part D of the Procedures specified in the DOC's Division Directive 201.013 (Supervision Fees – Field Services), effective July 1, 2008, provides that a waiver of supervision fees can be requested by completion of a Field Services Supervision Fees Waiver form, which will be reviewed and approved by a district supervisor. Waivers are to be granted only when the offender is financially unable to meet the obligation, but is willing to perform Sentencing to Serve (STS) or community service work in lieu of the fee.⁸

6. It is appropriate for the Department to rescind its request to the Department of Revenue to collect, through the Minnesota Revenue Recapture Program, the \$180.00 due from Daniel Conn for supervision fees. It is also appropriate to allow

⁷ Test. Conn.

⁸ Dept. Ex. A.

Mr. Conn to make an application for the Sentencing to Serve Program, for a determination whether he is eligible for a waiver of the supervision fee.

Based on the Conclusions, the Administrative Law Judge makes the following:

ORDERS

1. **IT IS ORDERED** that the Department of Corrections **SUSPEND** its request to the Revenue Recapture Program of the Department of Revenue to collect the \$180.00 supervision fee owed by Daniel Conn; and

2. **IT IS ORDERED FURTHER** that Daniel Conn be allowed to apply for a waiver of the \$180.00 supervision fee that would, if granted, allow him to satisfy his debt by participating in the Department's Sentencing to Serve Program; and

3. **IT IS ORDERED FURTHER** that the Department's Revenue Recapture request be **REINSTATED** if it is found, after application for the waiver of the \$180.00 fee, that Mr. Conn has the ability to pay the fee.

Dated: January 9th, 2009.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped
No Transcript Prepared

NOTICE

This Order is the final Decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this Decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

MEMORANDUM

The Administrative Law Judge is persuaded that Mr. Conn should be allowed to apply for the waiver of direct payment of his supervision fee, and to be allowed instead to participate in the community service opportunity offered by the Department's Sentencing to Serve Program, if he is found financially unable to meet the obligation.

Considering the circumstances of this matter as a whole, it is inappropriate to rely strictly upon the fact that Mr. Conn did not make a waiver application, or raise the question of whether he could fill out such an application, on the occasion of his first meeting with Ms. Stevens.

Ms. Stevens recalls very little about the meeting, but Mr. Conn's recollection that he wanted to perform "Sentence to Service" in lieu of his supervision fee is made more credible by the existence of the Department's record of Mr. Conn's discussion to that effect a year earlier with his prior probation officer, Julie Grunwald. The evidence that Mr. Conn discussed that subject in 2007 is not disputed, and it is logical he would have done so (as he testified) again in 2008.

Nothing in Minn. Stat. § 241.272, subds. 2 and 4, or in the 2006 or 2008 versions of the Department's Supervision Fees-Field Services Policy, require that the waiver application be made at a probationer's initial meeting with the community corrections official. Nor is the probationer required to initiate the request for a waiver by asking first to fill out the waiver request form. No application deadline is specified in those provisions.

The facts of this case support the modest relief requested by Mr. Conn. The record shows that he initiated an inquiry about the STS Program in 2007, and the ALJ believes he did so again in 2008. In these circumstances, it is unreasonable to bar his application for waiver now only because he did not fill one out earlier.

As a practical consideration, it may be more efficient simply to allow the Department's Revenue Recapture request to continue, particularly since Daniel Conn is incarcerated at a State Correctional Facility and may not be able to participate in community service. The record is silent as to Mr. Conn's release date, after which Mr. Conn may be able to satisfy his debt by working in the STS Program, but the ALJ sees no impediment to his being allowed to file an application at any time to determine his inability to pay.

R.C.L.